

For The United States District Court

For the District of Delaware

James Hall,

Plaintiff

v.

David Holman, Security Superintendent

Deputy Warden Lawrence Steggers, and

Acting Deputy warden Clyde D. Rogers

Defendants.

C.A. No. 04-1328-GMS



Plaintiff's Reply To State Defendants opposition to
Plaintiff's Motion for Appointment of Counsel

Come now, Plaintiff, James Hall, pro se, and moves
this Honorable Court to deny the Plaintiff's Request for Counsel
in support of this motion. The Plaintiff states as follows:

1. The Plaintiff, James Hall, who is considered a friend of this court
is a prisoner incarcerated with the Delaware Department of Correction
(located near Smyrna Delaware). And has filed this action pursuant
to 42 U.S.C. § 1983. in his pro se complaint he alleges the Supervisory
Officials at the (D.O.C.) failed to provide him with necessary protection from
assault by his cellmate in violation of his Constitutional Rights under the
Eighth Amendment.

Memorandum of Law

Plaintiff has no constitutional or statutory right to appointment of counsel in a civil cause. See *Ray v. Robinson*, 640 F.2d 474, 477 (3d Cir. 1981) (citing *Peterson v. Nimmer*, 452 F.2d 754, 757 (8th Cir. 1971)). However, the court has the authority to appoint counsel under 28 U.S.C. § 1915(d) (See *Sophia v. 477*). Appointments should be made only when it is necessary to avoid fundamental unfairness. *Madini v. Frante*, 650 F.2d 885, 886 (7th Cir. 1981).

2) The need to appoint counsel in this case is Applicable and Plaintiff incorporates by reference his claim as asserted in his Motion to Appoint Counsel, Affidavit, Memorandum, (D.I.16)

Standard of Review

in Harbor and, again in *Parham*, the third circuit court of appeals articulated the standard for evaluating a motion for the appointment of counsel filed by a pro se plaintiff. Initially, the court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in first instance. See *Parham*, 126 F.3d at 957 (citing *Tabron*, 67 F.3d at 157); *Accord Macklin v. Frante*, 650 F.2d 885, 887 (7th Cir. 1981) (per curiam) (citing with approval *Parham* and *legally meritorious* should, after examining the claim's *legally* and *meritorious* should, after examining the following factors

(1) The plaintiff's ability to present his own case; (2) The complexity of the legal issues; (3) The extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) The degree to which the case may turn on credibility issues; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can retain and afford counsel on his own behalf. See *prudent*, 126 F.3d at 457-58 (citing *Tolson*, 6 F.3d at 155-56 n.5). This list, of course, is neither ~~notable~~ and, by no means, exhaustive. See *id.* at 458.

Argument

4/10. of Defendants opposition to Plaintiff motion for Appointment of Counsel they admitt. that the case will turn on credibility determinations and will be a contest between the plaintiff and Defendants and that this factor however, alone does not determine if counsel should be appointed. the controlling factor they admit to along with *Tolson* 1, 2, 3, 5 & 6. of the controlling factors in *prudent* and *Tolson*. weigh in favor of appointing counsel in this case for Plaintiff.

As a initial matter the plaintiff made a request to proceed in forma paupers on 10-5-04. He was directed to pay a partial filing fee on 8-18-2005. Therefore, it would appear that plaintiff is unable to afford legal representation. Cf. *Tolson*, 6 F.3d at 157 n.5 ("if counsel is easily attainable and affordable to the litigant, but the plaintiff simply has made no effort to retain an attorney, then counsel should not be appointed by the court.") (citing *cooper v. A. Sargent* (c., 877 F.2d 170, 172 (2d Cir. 1989)). The record in this case suggests that plaintiff has made adequate attempts to retain a attorney as reflected doct. 4. his motion to Appoint Counsel. Supporting his position is needing this honorable court to

Respectfully Plaintiff is flattered by Defendants confidence in his Ability (legally), however, their self serving EXAGGERATION are transparent once viewed in relation to the early stages of this litigation and the pertinent facts Plaintiff offers the following:

Defendants argue at Item 7 of their opposition, Plaintiff was successfully negotiated the litigation road to this point through his own efforts, Plaintiff asserts: Initial stages which dont require any legal argument. Moreover, Defendants havent even filed their answer and or motion to dismiss. Defendants contention is misplaced and or premature. Also, the fact that Plaintiff had to "twice" Amend his complaint, which belies Defendants contentions, however, demonstrates Plaintiff's lack of legal experience... Again is incredible after the litigation hasnt even moved past the complaint stage.

Defendants argue at 8 Plaintiff has styled his case in a relatively clear manner and displays a disregard of the legal precedents. Defendants can't have you eat and eat it too, the exhibits have not been argued or supported by legal memoranda Complexity claim is also belied by fact that Plaintiff had to again twice Amend his complaint... by orders of the Court. Defendants contentions are misplaced and or premature. Plaintiff pray that The honorable court grant his motion plus dismissing Defendants opposition, or dismiss Defendants opposition. its premature w/out pre-judge, or appoint counsel for the limited purpose of asserting w/ discovery

Finally on November 9, 2005 Defendants opposed Plaintiff's properly filed and relevant and legitimate Discovery Request they effectively believe that they can force plaintiff to prove his case at the "Complaint Stage" without the aid of Discovery which is in conflict with the conflicting factor Item #3 in Parikh and Tabron, "The extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation, warrant appointment of counsel.

Conclusion

Plaintiff is not a graduate of law school like those who oppose his Motion for appointment of counsel and pray this Honorable Court grant his Motion for appointment of counsel wherefore plaintiff respectfully pray the court grant his motion for appointment of counsel to avoid fundamental unfairness.

Plaintiff seeks, prese pleading attorney under
Swain v. Kerner 404 U.S. 519 (1972)

James Hall
 James Hall 167581, Pro Se
 181 Rocklock Rd Grayson GA

11-18-05
 Date:

CERTIFICATE OF SERVICE

I, James Hall, hereby certify that I have served a true and correct copy(ies) of the attached: 2 Reply
To Defendants' opposition to Plaintiff's Motion of Course upon the following parties/person(s):

TO: Ms. CSA Barchi
820 N. French Street,
6th floor Washington DC
19801

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977,

On this 18 day of November, 2005.

James Hall

UNITED STATES POSTAL SERVICE



02 1A
00043953
MAILED

I/M Shawneetplace, please
SBI# 167581 UNITU-6-9
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

Office of the Clerk U.S.D.C.
844 N. King Street, October 18
Washington Del. 19801-3570

Coop Mail

